

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FRANCES A. MCNEAL-PAGE,)	CASE NO.1:05CV894
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
)	
Vs.)	
)	
DEGUSSA ADMIXTURES, INC.,)	<u>MEMORANDUM AND OPINION</u>
)	
Defendant.)	

CHRISTOPHER A. BOYKO, J:

This matter is before the Court on Defendant Degussa Admixtures, Inc.'s Motion to Strike Affidavit Opposing Motion for Summary Judgment (ECF #43). For the following reasons. the Court grants Defendant's Motion.

On April 14, 2006, Defendant filed its Motion for Summary Judgment. Plaintiff's Brief in Opposition was due May 15, 2006. Plaintiff was subsequently granted an extension until June 9, 2006 to file his Brief in Opposition. On June 12, 2006, Plaintiff filed her Brief in Opposition to Summary Judgment. Plaintiff's Brief contained no supporting evidentiary materials. On November 27, 2006, Defendant filed Affidavit Opposing Motion for Summary Judgment. The affidavit was filed without requesting leave from the court.

It is undisputed Plaintiff filed the affidavit nearly five months after the time to submit evidence contra to Defendants Motion for Summary Judgment. It is also undisputed Plaintiff

never sought, nor was granted, leave to file the untimely affidavit. Plaintiff contends Fed. R. Civ. P 56(c) permits filing of affidavits up to the day prior to the date for a hearing on the motions for summary judgment. No hearing on Defendant's Motion for Summary Judgment was requested or scheduled, therefore, Plaintiff's argument fails. Plaintiff also concedes no new information or information unavailable at the time of the filing of her Brief in Opposition is contained in the untimely affidavit. There is no authority under Federal or Local Rules permitting Plaintiff to file additional evidence without leave of court and absent a showing of good cause. Plaintiff did not seek leave of court, did not file any motions to compel discovery and has failed to show good cause why the affidavit should be permitted into evidence at this late date. Therefore, the Court grants Defendant's Motion to Strike Plaintiff's affidavit.

IT IS SO ORDERED.

5/18/07

Date

Christopher A. Boyko

CHRISTOPHER A. BOYKO
United States District Judge

FILED

MAY 18 2007

CLERK OF COURTS
U.S. DISTRICT COURT, N.D.O.
CLEVELAND